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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,106	11/09/2001	Daniel K. Schiffer	KCC-15,891	3014
35844	7590	02/08/2006	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			SPERTY, ARDEN B	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 02/08/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/036,106

Applicant(s)

SCHIFFER ET AL.

Examiner

Arden B. Sperty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters; prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-26,31,35 and 37-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-26,31,35 and 37-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **FINAL OFFICE ACTION**

1. Applicant's amendment and comments, 11/14/05, have been entered and carefully considered.

#### ***Claim Rejections - 35 USC § 112***

2. Claim 21 remains rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. If there is one film layer, how can it not constitute 100% of itself; if there is one film layer, how can it only constitute 50% of itself? This rejection may be overcome by amending lines 6-7 of claim 21 to read, "and constituting 50-100% of a thickness of the barrier film". This amendment clarifies which film is referred to in line 7 of the claim.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21-26, 31, 35, 37-39, 41, 44-54, and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5374259 to Takahashi et al., in view of US Patent 6028160 to Chandler et al.
5. The Takahashi reference teaches biodegradable films and nonwovens used in disposable personal care articles (col. 1, lines 6-13). Breathable films made from

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biodegradable polymeric materials are filled and stretched to provide air-permeability (col. 7, line 65- col. 8, line 12). Films and nonwovens are bonded together as desired to form a diaper (col. 12, line 67-col. 13, line 2). The films and nonwovens are used as various parts of a diaper, so as to provide a final composite which is completely biodegradable (col. 2, lines 5-32). The reference is not concerned with the layering sequence of films and nonwovens. Example 2 includes a nonwoven cloth, and a film backing, both made of the biodegradable polymer (column 13). The sequence of laminated films and nonwovens further varies in diaper construction according to desired functions. Determining and varying an optimal sequence of layers is basic in the science of materials engineering. Absent a showing of unexpected results with a specific number of layers and layer sequence, it would have been obvious to one of ordinary skill in the art to assemble the biodegradable films and nonwovens as desired for optimal results.

6. The Takahashi reference is silent with respect to the claimed terpolymer. Although the specific terpolymer is not recited by the Takahashi reference, functionally equivalent biodegradable polymeric film-forming materials, including the claimed terpolymer, are commercially available as prepared compositions. The Chandler prior art employs one such functionally equivalent material, Ecoflex (col. 2, lines 54-57). Ecoflex is a biodegradable film-forming composition comprising a terpolymer of terephthalic acid, adipic acid, and 1,4-butanediol. It would have been obvious to one of ordinary skill in the art, at the time the claimed invention was made, to use commercially available functional equivalents in practicing that which is taught by Takahashi. One of

ordinary skill in the art would have been motivated by convenience and efficiency provided by a commercially available prepared composition.

7. The layers of the Takahashi reference may be formed from the same material to facilitate thermal bonding (col. 9, lines 24-29). The examiner takes official notice that additional bonding means, such as adhesive bonding, are known to those of ordinary skill in the art and would have been obvious to employ as needed.

8. Spunbond and meltblown nonwovens are specifically recited by the Takahashi reference (col. 8, lines 20-26).

9. Regarding claims 44-47, and 50, the Takahashi reference is not concerned with the specific amount of filler and polymeric material. Absent a showing of unexpected results with specific proportions, it would have been within the ordinary level of skill of one in the art to determine these amounts.

10. Regarding claims 48-49, stretching preferences would have been obvious to one of ordinary skill in the art.

11. Claims 40, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Takahashi and Chandler, as applied to claim 21 above, and further in view of Roberts, "β-cyclodextrin Molecules and Their Use in Breathable Barriers."

12. The Takahashi reference teaches a filled, stretch-thinned biodegradable film, wherein a variety of fillers may be used. While the references are silent with respect to organic or cyclodextrin fillers, Roberts teaches that β-cyclodextrin enhances moisture

vapor permeability of polymeric barrier films. It would have been obvious to one of ordinary skill in the art to use cyclodextrin as a filler in the invention of Takahashi to enhance vapor permeability of the personal care product. (See Roberts section 1.3).

### ***Response to Arguments***

13. The amendments to the claims are not seen to overcome the prior art. Applicant has amended the claims to specify and "outer cover" laminate, and argues that the term "outer cover" has specific structural implications. Applicant asserts that "by definition" an outer cover implies a structure in which the layers are joined together along a continuous interface, however Applicant has not pointed out where said "definition" can be found. The definition asserted by Applicant is not set forth in the specification. In this instance, "outer cover" indicates an intended use only, and does not carry any connotations regarding implicit structure.

14. Applicant's amendment to the compositional requirements of the claims does materially effect the scope of the claim, despite allegations to the contrary.

15. It appears that the 35 USC 103(a) rejection in view of Burns, referred to in paragraphs 2, 3, and 6 of the previous office action, was inadvertently omitted. The rejection is herein withdrawn, in favor of the other previously stated prior art rejections.

16. Regarding the Takahashi reference (US Patent 5374259), Applicant's arguments are two-fold. Firstly, Applicant argues that a film and a nonwoven are only disclosed in the alternative, not in combination. The argument is not persuasive because Example 2 discloses a biodegradable nonwoven combined with a biodegradable film. Secondly,

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Applicant argues that Takahashi does not teach the composition set forth in the presently amended claims. This deficiency is resolved by the teachings of the Chandler reference, as stated in the rejection above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

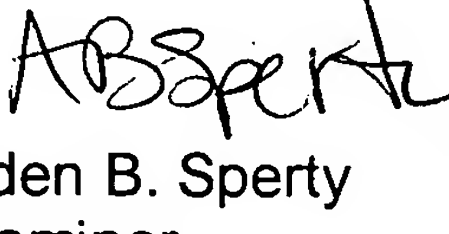
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.




If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Arden B. Sperty  
Examiner  
Art Unit 1771

January 27, 2006

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
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